



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket Nos. 20-105; MD Docket Nos. 21-190; FCC 21-49; FRS 26030]

Assessment and Collection of Regulatory Fees for Fiscal Year 2021.

AGENCY: Federal Communications Commission.

ACTION: Final action.

SUMMARY: In this document, the Federal Communications Commission (Commission) acts on several proposals that will impact FY 2021 regulatory fees.

DATES: This final action is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: This is a summary of the Commission's Report and Order, FCC 21-49, MD Docket No. 21-190, and MD Docket No. 20-105, adopted on May 3, 2021 and released on May 4, 2021. The full text of this document is available for public inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, DC 20554, or by downloading the text from the Commission's web site at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0906/FCC-17-111A1.pdf.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418-0444.

SUPPLEMENTARY INFORMATION:

I. ADMINISTRATIVE MATTERS

A. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is located towards the end of this document.

B. Final Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

C. Congressional Review Act.

3. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

II. INTRODUCTION

1. In this Report and Order, we adopt a new distinction between non-geostationary orbit (NGSO) satellite systems, as further described below, by creating two new fee subcategories, one for “less complex” NGSO systems and a second for all other NGSO systems identified as “other” NGSO systems, both under the broader category of “Space Stations (Non-Geostationary Orbit)”.

III. REPORT AND ORDER – NEW REGULATORY FEE CATEGORIES FOR CERTAIN NGSO SPACE STATIONS

2. We first address the recent modifications in methodology for International Bureau licensee fees to more closely reflect the statutory requirement. After previously increasing the allocation of indirect full time equivalents (FTEs) in the International Bureau, in FY 2020 the Commission adopted a regulatory fee for foreign licensed space stations with U.S. market access, recharacterizing and thereby increasing the total number of direct FTEs for the International Bureau to 28. The Commission also adjusted the FTE allocation for the international bearer circuit (IBC) category to eight FTEs, from 6.9 FTEs, to better reflect the direct FTE work in the

International Bureau for that fee category, resulting in 20 FTEs assigned to the satellite and earth station regulatory fee category. The Commission also adjusted the allocation of FTEs among geostationary orbit (GSO) and NGSO space station and earth station operators. The Commission noted the disparity in number of units between GSO space stations (98) and NGSO space stations (seven), and noted that under a single NGSO license, many satellites can be operated while counting as a single unit for regulatory fee purposes, but only one satellite can be operated per GSO space station regulatory fee unit. To ensure that regulatory fees more closely reflect the work of processing applications and rulemaking for each category, the Commission allocated 80% of space station regulatory fees to GSOs and 20% of the space station regulatory fees to NGSOs.

3. In the further notice of proposed rulemaking (FNPRM) (85 FR 71593, Nov. 10, 2020) accompanying the FY 2020 Report and Order (85 FR 59864, Sept. 23, 2020), the Commission sought comment on different proposals for new fee categories for different types of NGSO systems. In response to the FNPRM, some commenters generally argue that the size of an NGSO system, or the services the system may provide, does not correlate to Commission resources. Others support adopting various aspects of the FNPRM proposals, and that NGSO systems should be distinguished by type. For purposes of calculating regulatory fees, we determine that the number of U.S.-authorized earth stations with which an NGSO system will communicate and the primary use of the NGSO system are complementary considerations that together define the complexity of the system. After consideration of the record, we conclude that the majority of our NGSO-related regulatory activities involve certain types of NGSO systems, and that the NGSO category can be divided into two types of systems for purposes of the assessment of regulatory fees: (1) “less complex” systems, defined as NGSO satellite systems planning to communicate with 20 or fewer U.S. authorized earth stations that are primarily used for Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS); and (2) “other” NGSO satellite systems. We therefore adopt two subcategories under the Space

Station (Non-Geostationary Orbit) fee category: (1) Space Station (Non-Geostationary Orbit) – Less Complex; and (2) Space Station (Non-Geostationary Orbit) – Other, as discussed below.

4. In the FNPRM, the Commission sought comment on several specific proposals to define multiple NGSO system fee categories. Among these was a proposal from Amazon Web Services, Inc. (AWS) to adopt a nominal regulatory fees for NGSO systems with five or fewer U.S.-licensed earth stations for Telemetry, Tracking, and Control (TT&C) and non-domestic data and downlink purposes. As discussed below, we adopt a variation on this proposal. The Commission also sought comment on a proposal from Kineis to use a formula to calculate fee tiers for an NGSO system based on the number of operating satellites and the total transmit bandwidth. Kineis had argued that its proposal would allow for fair allocation of fees in consideration of the varying facets of each NGSO system, such as size, number of space stations, necessary spectrum, and services provided. In comments to the FNPRM, Kepler Communications Inc. (Kepler) recommends a variation on Kineis’s approach, proposing fee tiers based on quantity of desired bandwidth, the “value” of the desired spectral band, and aggregate on-orbit mass. Additionally, the Commission sought comment on a proposal from Eutelsat S.A. (Eutelsat) to create two regulatory fee categories for NGSO systems based on the number of satellites, as well as a proposal of Myriota Pty. Ltd. (Myriota) to assign each NGSO system into one of three fee categories: fixed-satellite service (FSS), mobile satellite service (MSS) and remote sensing (EESS), and other NGSO systems.

5. In connection with these various proposals, a number of commenters agree that the Commission expends more resources on certain types of NGSO systems. Commenters focus on various characteristics of the NGSO systems. AWS, for example, suggests that EESS systems that communicate with five or fewer U.S.-licensed earth stations for TT&C and non-domestic data downlink purposes do not meaningfully gain access to the United States market. AWS explains that instead, the U.S.-located earth stations function as a data transit location, and actual service occurs in the cloud where the data is processed. Planet Labs Inc. (Planet) supports

Myriota's proposal to distinguish between systems based solely on the type of service offered.

Planet asserts that the Commission expended greater resources in 2020 on FSS-related report and orders, proceedings, rulemakings, and processing adjudications than it did for other services.

6. Not all commenters take this view, however. For example, Space Exploration Technologies Corp. (SpaceX) disagrees with Myriota's proposal and contends that the record contains no evidence that the service provided by an NGSO system correlates with the expenditure of Commission resources. SpaceX offers that many EESS systems require Commission staff to coordinate with government systems through the Interdepartmental Radio Advisory Committee process, while many FSS systems do not, and that the Commission has recently conducted rulemakings affecting various types of satellite systems beyond FSS systems. Planet counters that, although processing EESS applications can also be time consuming, the vast majority of the processing burden is borne by the applicant.

7. After reviewing and evaluating the regulatory tasks for all NGSO systems, we agree with commenters asserting that we should differentiate within the NGSO space station category for regulatory fees. The amount of work involved in regulating NGSO systems and the number of reasonably related benefits provided to the payors of the NGSO fee category by our activities appear to directly correlate with certain characteristics in a requested authorization for an NGSO system. Both the number of earth stations and the primary use of the system are relevant. Accordingly, we adopt a regulatory fee category for "less complex" NGSO systems and define this "less complex" NGSO system category by adopting elements of several of the FNPRM proposals. For regulatory fee purposes, we define a "less complex" systems as NGSO satellite systems that plan to communicate with 20 or fewer U.S. authorized earth stations, primarily used for EESS and/or AIS. Any NGSO satellite systems that do not qualify as "less complex" would fall into the category of "other" NGSO satellite systems, for regulatory fee purposes.

8. Our experience demonstrates that the systems providing EESS and or AIS are most likely to be "less complex" systems if they also are planning to communicate with 20 or fewer earth

stations. These “less complex” systems require fewer Commission resources because, for example, they are nearly always granted pursuant to waivers of resource-intensive processing rounds, based on their ability to share with other operators in the requested frequency bands. We agree with Planet’s assertion that those systems authorized through a processing round typically do involve considerable time and effort adjudicating contentious processing round disputes and related licensing matters. In addition, the Commission has expended significant resources on rulemakings and licensing proceedings for “more complex” NGSO systems. These rulemakings and licensing proceedings have focused on issues that correlate to systems planning to communicate with a large number of earth stations. As Planet notes in its comments, the Commission historically has devoted significant resources to NGSO FSS-related rulemaking matters. The Commission has also expended considerable resources evaluating spectrum sharing issues between NGSO FSS and terrestrial services, which increase in complexity as the number of earth stations increase. Moreover, systems planning to communicate with larger numbers of earth stations typically have a large global presence. These global systems are likely to require more International Bureau staff resources in connection with international forums, such as the International Telecommunication Union, because of the significant global presence of these systems. They also require, in many cases, more significant spectrum needs, which may involve increased multi-lateral coordination. Taking all of these facts together, we find both that adopting a category for “less complex” NGSO systems is appropriate, and that the criteria we have identified for this category generally correlates with those systems that receive fewer regulatory benefits from the Commission’s overall activities benefiting NGSOs.

9. We also find the Commission’s regulatory work and related benefits provided to the payor of this fee category appear to have a direct correlation with the number of U.S.-authorized earth stations with which an NGSO system will communicate. As AWS points out, the complexity of that system relates generally with the amount of regulatory resources expended in connection with this type of system. Specifically, we find that those systems planning to use 20

or fewer earth stations have generally limited scope of authorization and require significantly less Commission oversight than the regulatory work involved with other NGSO systems. Our internal analysis also shows that regulation of NGSO systems planning to communicate with 20 or fewer U.S.-authorized earth stations tends to be noticeably less complex compared to the regulation of NGSO systems planning to communicate with more than 20 earth stations.

Although 20 earth stations are greater in number than AWS's proposed five earth stations, we think that it would be a more accurate number as a proxy to reflect the complexity of space systems based on our analysis.

10. We use the phrase “planning to communicate” since some more complex NGSO systems may communicate with a small number of earth stations during initial operational phases, but actually intend to communicate with a significantly larger set of earth stations. We find this initial phase to not be reflective of Commission costs, and therefore we will look to longer-term system design in order to determine complexity. We will interpret “planning to communicate” based on the system design provided at the NGSO space station application stage. For regulatory fee purposes, the term “earth station” encompasses all stations, including satellite gateways and user terminals. Transmitters, such as AIS, do not fall within the definition of “earth station” under part 25 of the Commission’s rules since satellite reception is not intended, but rather is an incidental monitoring of a signal primarily intended for reception by terrestrial stations.

11. We are persuaded by AWS to include TT&C earth stations used for spacecraft control in this earth station count. In addition, the total number of earth stations include all earth stations planning to communicate with the relevant system – whether the earth station is operated by the system operator or a third party is irrelevant for regulatory fee purposes.

12. As discussed above, we expect less complex NGSO space systems operations would involve primarily EESS and/or AIS. NGSO systems that plan to communicate with 20 or fewer U.S.-authorized stations often are developed for collecting earth exploration data and utilize communications primarily for the purpose of transferring data collected in space back to the

ground. Such operations do not include objectively complex services like industrial Internet of Things services and other data services which involve space stations that typically communicate with hundreds or thousands of user terminals, and impose larger regulatory review burdens.

Although we expect less complex NGSO space systems would be used primarily for EESS and/or AIS, we decline to explicitly limit “less complex” system eligibility to a particular service class alone, as proposed by Myriota, because some “less complex” systems may use multiple types of services, and the number of earth stations with which a system plans to communicate is a reasonable proxy for identifying complexity of NGSO space stations systems, and our regulatory costs. We note that EESS services typically are authorized to communicate with 20 or fewer U.S.-authorized earth stations. With respect to AIS, as a shipboard broadcast system that transmits a marine vessel’s identification and position to aid in navigation and maritime safety, we also found that these systems receiving AIS signals and planning to operate with 20 or fewer earth stations involve less Commission oversight compared to other NGSO systems. We do not, however, foreclose the possibility of designating other categories of NGSO systems as “less complex” systems in the future if our experience supports a finding that our regulatory work for such systems is significantly less than those for other NGSO systems.

13. We assess the “less complex” regulatory fee on a per NGSO space station system basis, rather than on a per-earth station basis as proposed by AWS. Additionally, although AWS proposes that we assess only a nominal fee for NGSO systems with a small number of earth stations, we find that NGSO systems communicating with even a small number of earth stations do still benefit from the Commission’s regulation, including enforcement, rulemakings, and international activities, and require Commission resources, therefore justifying a substantive, rather than nominal, fee. As AWS notes, most NGSO systems plan to utilize earth stations globally to remain competitive, and, for these NGSOs, downlinking to the United States is done as a function of needing a robust earth station network for its operations. Regardless of whether a space system communicates with one or thousands of earth stations, the Commission still

expends significant time and resources in regulating these space systems, and those considerations will be calculated accordingly into the “less complex,” yet substantive, fee. We also find that among the new less complex category of space systems, there are not significant differences with respect to our regulatory activities benefiting each space system. We further decline to assess fees for an NGSO space station system on a “per earth station” basis. We note that the number of earth stations does not drive the regulatory resources expended for regulating space stations per se; rather, the number of earth stations typically correlates to the complexity of an NGSO space station. As noted elsewhere, we use the number of earth stations as a proxy to determine complexity of a space system. Our experience shows that there is not a meaningful resource difference, for example, between regulation of a system planning to communicate with four U.S. earth stations versus a system planning to communicate with 17 U.S. earth stations. The clear differentiation, at this point, appears to be between those NGSO systems planning to communicate with roughly 20 or fewer earth stations authorized by the United States and other NGSO systems, the vast majority of which plan to communicate with more than 100 earth stations authorized by the United States, which may include user terminals or otherwise ubiquitously deployed earth stations. In our experience, there are not “close cases” between these two categories of systems. Accordingly, we adopt this fee on a per NGSO space station system basis given the regulatory cost and benefits directly related to NGSO space systems, not earth stations.

14. We disagree with those commenters advocating against adopting additional categories of NGSO fees. The Commission collects regulatory fees based on the Commission’s efforts spent on regulating a payor and taking into account the benefits provided to the payor by the Commission’s activities. Telesat and SES suggest that, if a system operator believes that in a particular case the standard NGSO fee is substantially disproportionate, it can seek a fee waiver or reduction. While our rules do enable waiver requests, they are exceptional in nature, and we decline to set up a process based on an expectation of a fee waiver or reduction. As described

above, we see a clear dividing point between systems that are more complex to regulate and systems that require far fewer resources to regulate, and find that this dividing line is fairer and easier to administer than a fee waiver or other process. We also disagree with Eutelsat and OneWeb that we need additional development of the record before creating a new NGSO fee category. We sought further comment in the FNPRM to develop the record on this issue and using a combination of factors explored in the record, conclude that certain NGSO systems should pay a different fee based on the resources required to regulate such systems. If circumstances warrant, the Commission may choose revisit or revise this new category in the future.

15. We also disagree, at this time, with the formula-based systems proposed by Kineis and Kepler, since these proposals are overly complex and would require the additional expenditure of Commission resources to calculate and assign fees for each individual system. Moreover, we do not find that all aspects proposed to be factored into these formulas correlate with the resources the Commission expends in regulating each system. In our experience, number of satellites, total bandwidth, on-orbit mass, and market share of the service type are not consistently indicative of the complexity of NGSO regulation. We also decline to adopt Eutelsat's proposal to create two regulatory fee categories for NGSO systems based on the number of satellites. It is not our experience that number of satellites (or satellite mass) is the key driver of system complexity and regulation. For example, an NGSO system with a small number of satellites, authorized as part of a processing round to operate in the FSS to provide broadband to user terminals in a particular area, will receive significant continuous benefits reasonably related to our regulatory work. Instead, we find that the number of earth stations authorized by the United States with which a system plans to communicate provides a clearer proxy for identifying system complexity upon which to allocate fees. This approach ensures that our fee apportionment is reasonably related to our regulatory cost and that the fee structure is easier to administer.

16. In summary, after reviewing the record and analyzing the resources the International Bureau devotes to NGSO oversight and regulation, we adopt an additional NGSO space station category for “less complex” NGSO systems, for regulatory fees. In addition, we create a fee category for “other” NGSO systems that do not qualify as “less complex” systems. We place these two categories: (1) Space Station (Non-Geostationary Orbit) – Less Complex; and (2) Space Station (Non-Geostationary Orbit) – Other under the current Space Station (Non-Geostationary Orbit) fee category.

IV. FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the Further Notice of Proposed Rulemaking (FNPRM) accompanying the regulatory fee Report and Order for fiscal year 2020. The Commission sought written public comment on these proposals including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the IRFA.

A. Need for, and Objectives of, the Report and Order

2. In the Report and Order, the Commission adopts a modified version of a proposal to the FNPRM on creating a new regulatory fee category for “less complex” non-geostationary orbit (NGSO) satellite systems. The Commission defines “less complex” NGSO satellite systems as those NGSO systems that plan to communicate with 20 or fewer earth stations in the United States primarily used for Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS).

3. Under section 9 of the Communications Act of 1934, as amended, (Communications Act or Act), regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission’s enforcement, policy and rulemaking, user information, and international activities in an amount that can be reasonably expected to equal the amount of the Commission’s annual appropriation. The objective in the Report and Order for adopting the new

regulatory fee category is to have a new category (and lower fee) for the smaller NGSO systems instead of grouping them with the larger NGSO systems.

B. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

4. None.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.

The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

7. Other Toll Carriers. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code category is for Wired Telecommunications Carriers as defined in paragraph 6 of this FRFA. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that

operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, most Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities.

8. All Other Telecommunications. “All Other Telecommunications” is defined as follows:

This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$35 million or less. For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million. Thus, most “All Other Telecommunications” firms potentially affected by the rules adopted can be considered small.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

9. This Report and Order does not adopt any new reporting, recordkeeping, or other compliance requirements.

F. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

10. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

11. In the FNPRM, the Commission sought comment on whether it should adopt a new fee category for certain types of NGSO systems, and in the Report and Order the Commission adopted a new category for a type of smaller “less complex” NGSO system that would have a lower regulatory fee than the other NGSO systems. The Commission reviewed and evaluated the regulatory work done for all NGSO systems and found that those systems planning to use 20 or fewer earth stations have generally limited scope of authorization, i.e., Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS) only, require significantly less Commission oversight than the regulatory work involved with other NGSO systems. For that reason, the Commission adopted a new regulatory fee category for these smaller NGSO systems.

12. In keeping with the requirements of the Regulatory Flexibility Act, we have considered certain alternative means of mitigating the effects of fee increases. This new fee category adopted for “less complex” NGSO systems will have a lower regulatory fee than that for the other NGSO systems, because these systems are much smaller than traditional NGSO systems.

V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 4(i) and (j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, 159A, and 303(r), this Report and Order IS HEREBY ADOPTED.

14. IT IS FURTHER ORDERED that the Report and Order SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

15. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis in this document to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Cecilia Sigmund,

Federal Register Liaison Officer.

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